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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6581 OF 2006

Sandip Bhimrao Umralkar and Ors. ... Petitioners

Versus

Ashabai Bhimrao Umralkar and Ors.... Respondents

Mr. S.K. Shinde with Mr. Prashant Badole for Petitioners.

Mr. B.G. Vaidya for R. No. 7.

CORAM: F.I. REBELLO &
S.J. VAZIFDAR,JJ.
DATED: FEBRUARY 09, 2007

P.C.:

1. The Petitioner contends that on the death of his father, he has interest in the property and the mere fact that in the society records, the property stands in the name of his mother, respondent No. 1 who was guarantor for the loan, it was not open to the secured creditors to have issued notice under Section 13(4) of the Securitization Act.

2. Any person including a non borrower and or non guarantor has a remedy by way of appeal against the notice issued under Section 13(4) of the Securitization Act by way of appeal under Section 17 of the Act. The Petitioner therefore, does have an efficacious and legal remedy available. Section 17(4) will have to be read in the context of

positive directions to be issued by the tribunal. It does not mean that if it is the case that the property of the person is not given as a security or not of ownership of the principal borrower or guarantor and has been taken in possession by virtue of exercise of powers under Section 13(4), the appellate authority is barred from passing an order under Section 17. Even otherwise, the sale would be subject to objection being raised by third party having interest in the property.

4. In our opinion, the challnege to the provision of the Act, after the judgment in Mardia Chemicals by the Supreme Court, cannot be considered by us.

5. Considering the above, in our opinion, this will not be a fit case for us to exercise our extra ordinary jurisdiction. With the above observations, Petition disposed of.

. On behalf of the secured creditors, the learned counsel makes a statement that they will not take possession for a period of four weeks from today. Statement accepted.

(S.J. VAZIFDAR,J.) **(F.I.REBELLO,J.)**